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October 19, 1999

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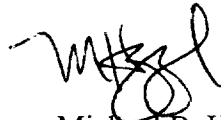
Re: CC Docket No. 99-295, Application of Bell Atlantic for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York.

Dear Ms. Salas:

Enclosed for filing in the above-referenced proceeding are an original, six copies, and a 3½ inch disk containing of the Comments of Allegiance Telecom, Inc.

Would you kindly date-stamp the additional copy provided and return the same to the bearer. Thank you for your assistance.

Sincerely,



Michael B. Hazzard

Enclosures

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

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OCT 19 1999

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)
)
Application of Bell Atlantic)
Pursuant to Section 271 of the)
Telecommunications Act of 1996)
To Provide In-Region,)
InterLATA Services)
in New York)

CC Docket No. 99-295

**COMMENTS OF
ALLEGIANCE TELECOM, INC.**

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October 19, 1999

SUMMARY

The application of Bell Atlantic-New York ("BA-NY") for authority to provide in-region, interLATA services in New York marks a milestone in the Commission's efforts to open local telecommunications markets to competition. In Allegiance's view, BA-NY has made very substantial progress toward meeting the requirements of section 271. Indeed, thanks largely to the dedication and persistence of the New York Public Service Commission, BA-NY's performance in opening its markets comes much closer, by far, to satisfying those requirements than any of the previous applications that the Commission has considered.

In Allegiance's view, BA-NY has met the requirements of section 271 with respect to many of the most important and difficult competitive checklist obligations, including:

- **OSS access through the EDI interface.** Bell Atlantic provides non-discriminatory access to its operations support systems ("OSS") through the Electronic Data Exchange ("EDI") interface, allowing Allegiance to implement electronic "bonding" for local service orders.
- **Collocation.** Bell Atlantic has significantly improved its record with respect to the provisioning and management of central office collocation.
- **Maintenance and repair performance.** Bell Atlantic has significantly improved its ability to isolate and eliminate unbundled network element "troubles."

While BA-NY is still deficient in a few critical areas, including primarily those associated with hot cuts, interconnection trunk, high-capacity loop, and transport provisioning, BA-NY is very close to achieving overall compliance and clearly possesses the ability to reduce substantially or even eliminate such deficiencies in short order. BA-NY's substantial progress should be rewarded by affording BA-NY the opportunity to supplement the record through voluntary extension of the 90-day review period until such time that BA-NY has demonstrated

its compliance in the few remaining areas. Allegiance commits to report objectively to the Commission on BA-NY's performance until such time that BA-NY is in compliance.

In preparation for in-region interLATA market entry, the Commission should also develop a federal framework for ensuring ongoing compliance with Section 271, and should do so in a manner consistent with Allegiance's February 1, 1999 Anti-Backsliding Petition. Finally, the Commission should adopt a "customer liberation," fresh look requirement that permits customers to discontinue long term contracts with BA-NY to ensure that all consumers have access to competitive alternatives.

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In the matter of)	
)	
Application of Bell Atlantic)	
Pursuant to Section 271 of the)	CC Docket No. 99-295
Telecommunications Act of 1996)	
To Provide In-Region,)	
InterLATA Services)	
in New York)	

**COMMENTS OF
ALLEGIANCE TELECOM, INC.**

Allegiance Telecom, Inc. (“Allegiance”),¹ by its attorneys, hereby submits its comments in response to the Commission’s Public Notice (DA-99-2014) in the above-captioned proceeding. The Public Notice invites interested parties to comment on the application of Bell Atlantic-New York (“BA-NY”) to provide in-region interLATA services in the State of New York, pursuant to section 271 of the Communications Act of 1934, as amended (“Act”).

INTRODUCTION

BA-NY’s Application for authority to provide in-region, interLATA service is a milestone in the Commission’s efforts to open local telecommunications markets to competition. As discussed below, BA-NY has made very substantial progress toward meeting the requirements of section 271, particularly in recent months. Indeed, BA-NY’s performance to date in opening its markets in New York comes much closer, by far, to

¹ Allegiance is a competitive local exchange carrier (“LEC”) based in Dallas, Texas that provides primarily small and medium-sized businesses with a full array of services, including local, long distance, high-speed data, digital subscriber line, and Internet access services.

satisfying those requirements than any of the previous applications that the Commission has considered. Most notably, as a result of the operations support systems ("OSS") electronic bonding effort undertaken by Allegiance and BA-NY, BA-NY is providing OSS access to Allegiance in accordance with section 271.

The filing of the BA-NY Application was preceded by an extensive, comprehensive series of proceedings before the New York State Public Service Commission ("New York Commission") that are directly responsible for the dramatic improvements in BA-NY's performance in many areas over the past year. Further, as a result of the work of the New York Commission, and the participating parties, including BA-NY, local competition is beginning to take hold in earnest in parts of New York.

While there is much to applaud in its Application, BA-NY still falls short of the section 271 statutory standard in four provisioning areas, including hot cuts, interconnection trunks, unbundled loops, and interoffice transport. Rather than deny BA-NY's Application, however, Allegiance recommends that BA-NY request a suspension of section 271's 90-day statutory period so that it can improve its provisioning of these unbundled network elements ("UNEs"), bring itself into compliance, and file supplemental information, which could be evaluated over a subsequent 90-day period.

If BA-NY continues to improve its performance in the areas discussed below, it should be able to obtain section 271 authority in New York in short order. Before permitting any Bell Operating Company ("BOC") to provide in-region interLATA

Allegiance currently operates in 18 markets, including markets in New York, and plans to offer its services in at least 24 major metropolitan areas in the United States by mid-year 2000.

services, however, Allegiance urges the Commission to adopt comprehensive federal anti-backsliding measures, consistent with Allegiance's February 1, 1999 Anti-Backsliding Petition.² It is critical that rules for ensuring ongoing compliance – including remedies for poor performance – are put in place prior to a grant of section 271 relief. The Commission's section 271 obligations do not end upon approval of a BOC's application and regulatory certainty is necessary to enable all parties to understand the means by which the Commission will ensure continued compliance with the requirements of section 271. Allegiance believes that such action would reinforce the New York Commission's anti-backsliding policies which even BA-NY endorsed in its April 6, 1998 Pre-Filing Statement,³ commitments and that such action would likely facilitate more prompt approval of section 271 applications emanating from other states.

In addition, concurrently with any grant of in-region interLATA relief, the Commission should adopt a "customer liberation" fresh-look policy for BOC customers who have entered into term contracts for local service. Such term agreements create a fundamental roadblock to the development of robust competition in local markets since they effectively foreclose new entrants from competing to serve a key segment of the

² *In the Matter of the Development of a National Framework to Detect and Deter Backsliding to Ensure Continued Bell Operating Company Compliance with Section 271 of the Communications Act Once In-region InterLATA Relief Is Obtained*, Petition for Rulemaking, RM 9474 (Feb. 1, 1999) ("Allegiance Petition").

³ *In the Matter of Petition of New York Telephone Company for Approval of Its Statement of Generally Available Terms and Conditions Pursuant to Section 252 of the Telecommunications Act of 1996 and Draft Filing of Petition for InterLATA Entry Pursuant to Section 271 of the Telecommunications Act of 1996*, Pre-Filing Statement of Bell Atlantic-New York, Case 97-C-0271 (Apr. 6, 1998) ("Pre-Filing Statement").

market. A customer liberation policy would enable all carriers – including the BOC – to compete to serve those customers in the local market on an equal footing.

The initial Commission decision approving a BOC application for in-region interLATA authority will establish a binding standard for evaluating future section 271 applications. In Allegiance's view, its recommendation that BA-NY seek a temporary suspension of this proceeding until it has satisfied its remaining obligations under section 271, combined with the implementation of anti-backsliding and customer liberation fresh-look policies, would establish an effective binding standard. Clearly consumers, Congress and the new competitors themselves need the Commission to get it right the first time since the cost of not doing so will directly affect the expansion of competitive alternatives for years to come.

I. THE PRE-FILING PROCEEDING BEFORE THE NEW YORK COMMISSION HAS PRODUCED A FRAMEWORK THAT WILL IRREVERSIBLY OPEN NEW YORK MARKETS TO COMPETITION OVER TIME

The very significant progress that BA-NY has made toward satisfying the standards for entry into the in-region interLATA market in New York can be traced directly to the extensive proceedings conducted under the auspices of the New York Commission. By virtue of its efforts to enter local markets throughout the country over the last two years, Allegiance has acquired first-hand experience with the different approaches state commissions have developed to open their markets to competition. In Allegiance's view, the New York Commission's section 271 process, which emanated from BA-NY's Pre-Filing Statement, has established a credible blueprint for fostering competition in local telecommunications markets throughout the country.

The Pre-Filing Statement set forth a comprehensive package of commitments, which led to the development of a detailed set of performance measures for assessing BA-NY's compliance. In addition, the Pre-Filing Statement led to a rigorous third-party operations support systems ("OSS") test in New York, which KPMG-Peat Marwick conducted with Hewlett Packard. This rigorous OSS test highlighted to all parties the areas in which BA-NY's OSS were working and the areas requiring continued improvement. Moreover, the OSS test required BA-NY to continue testing in areas where poor performance was identified until it received a passing mark.

The substantial progress toward opening local markets accomplished through the New York Commission's section 271-related proceedings results, to a large extent, from the broad statutory authority that the New York Commission possesses in regulating telecommunications.⁴ The New York Public Service Law has enabled the New York Commission since the 1970's to achieve and maintain its position as a national leader in fostering competition for telecommunications services and products. Other state commissions with narrower regulatory authority may not be able to play such a vigorously pro-competitive role. In Texas, for example, a state statute that is to a large extent the result of years of intensive ILEC lobbying through the use of more than one hundred hired lobbyists as well as ILEC political strong-arming substantially limits the Public Utility Commission's authority to review and appropriately address many incumbent LEC actions, including those associated with service bundling, pricing, and affiliate transactions. In evaluating this and future section 271 applications, the Commission

⁴ See, New York Public Service Law, Laws 1910, Chapter 48, Article 5.

should be aware of the statutory authority possessed by various state commissions and any limits to that authority that may constrain significantly state enforcement efforts and should, as an integral part of the public interest review and assess the 271 applications, and consider the BOC's involvement in the creation of legislation that restrains the state commission. Future section 271 applicants may not rate nearly as high as BA-NY in this regard.

Based on Allegiance's first-hand experience, the framework that emerged in New York from the Pre-Filing Statement has resulted in substantial service quality improvements by BA-NY. Allegiance's involvement with BA-NY began in earnest in June 1998 when the two companies agreed to work together to interconnect electronically Allegiance's OSS with BA-NY's OSS for the provision of local service orders, known as "LSRs." About six months later, Allegiance and BA-NY announced the first successful implementation of electronic "bonding" between a BOC and a competitive LEC for LSRs.⁵ Electronic OSS interconnection has enabled Allegiance, with minimal manual intervention, to process orders for customers switching from BA-NY to Allegiance and to confirm initiation and provision of service in real time.

Allegiance's experience implementing electronic bonding with BA-NY led to Allegiance's direct involvement in the New York Commission's third-party OSS test conducted by KPMG. Numerous times throughout the testing process, KPMG representatives visited Allegiance's offices to analyze BA-NY's performance in key testing areas including OSS interface functionality, change management, maintenance and repair, billing, and performance tracking. As part of the OSS test, Allegiance worked directly with BA-NY and KPMG to help

⁵ Press Announcement, *Allegiance Telecom Announces Industry's First Implementation of "Electronic Bonding" with Bell Atlantic in New York* (Jan. 7, 1999).

improve procedures and processes in a number of areas, such as in unbundled local loop “hot cuts.”⁶

In the course of these electronic bonding and OSS testing efforts, BA-NY displayed a commitment to improving its performance in providing access to unbundled network elements and associated OSS interfaces as well as a willingness to treat competitive LECs as peers in the OSS development and testing processes. Allegiance gives BA-NY very high marks in many of these areas. Nonetheless, a few problem areas remain.

II. BA-NY’S APPLICATION MEETS CRITICAL REQUIREMENTS OF SECTION 271; HOWEVER, ADDITIONAL PROGRESS IN FOUR AREAS IS NEEDED BEFORE THE COMMISSION CAN GRANT THIS APPLICATION

In Allegiance’s view, BA-NY’s Application shows that it currently satisfies several key requirements of section 271. In particular, BA-NY provides non-discriminatory access to OSS through its EDI interface, to which Allegiance has interconnected through “electronic bonding.” In addition, BA-NY has improved substantially its provisioning and management of central office collocation, as well as its ability to isolate and repair UNE network “troubles.” Although BA-NY complies with many of its competitive checklist obligations, there remain critical areas in which BA-NY’s performance is deficient. As discussed below, Allegiance is confident that BA-NY can address and correct these problem areas expeditiously. Allegiance recommends, in the interest of expedition, that Bell Atlantic consider a voluntary suspension of the 90-day statutory period in order to remedy these problems and supplement its Application. Moreover

⁶ The term “hot cut” describes the process by which a BA-NY loop is physically disconnected from a BA-NY switch and connected to a competitive LEC’s network.

the Commission should “drive” BA-NY to do so through the submission of supplemental data recommended by Allegiance.

A. Through The Establishment of Electronic Bonding, BA-NY Is Providing Allegiance With Nondiscriminatory Access To OSS In Accordance With Section 271

As discussed above, BA-NY currently provides nondiscriminatory access to its OSS through an EDI interface between Allegiance and BA-NY. Through the cooperative efforts of BA-NY and Allegiance, with the support of the New York Commission, this electronic interconnection has substantially increased the speed and reliability of the local service provisioning process.

As with any complex computer system, however, issues occasionally arise that must be addressed cooperatively by BA-NY and Allegiance. In some instances, these problems may impair Allegiance’s ability to obtain nondiscriminatory access to UNEs and, hence, BA-NY’s compliance with that statutory requirement. For example, BA-NY’s change management process associated with its OSS interfaces and processes contains weaknesses in the areas of pre-release testing and prompt post-implementation remediation. BA-NY’s August 23, 1999 change release contained flaws that affected Allegiance’s ability to process orders through the BA-NY OSS gateway. Those flaws resulted in incomplete and inaccurate processing of orders and contributed to delays in the implementation of new customer services. While BA-NY put a number of fixes in place to address several of the problems that the August 23 release created and now has plans to eliminate the remaining problems, BA-NY should have tested sufficiently to prevent these problems in the first place and should have put in place an action plan that

would have much more quickly eliminated the remaining problems. Allegiance is willing to certify BA-NY's compliance with section 271 only after BA-NY has eliminated the remaining OSS interface problems and is providing nondiscriminatory access to UNEs.

B. BA-NY Has Improved Its Collocation Provisioning and Network Repair Capabilities To Comply With Section 271

One recent area of substantial improvement involves BA-NY's collocation management in New York. Because Allegiance is an extensive user of unbundled loops, Allegiance relies heavily on central office collocation. The collocation process is one in which BA-NY and competitive LECs must work together closely, as competitive LECs depend on BA-NY for everything from building access to electric power and environmental conditioning. To improve upon coordination efforts, BA-NY recently launched a new group called the Collocation Customer Care ("CCC") Help Desk to manage collocation-related issues.

Since the establishment of that group, Allegiance has experienced significantly-improved performance by BA-NY in addressing and resolving issues associated with in-service central office collocation arrangements. For instance, BA-NY's CCC Help Desk has a record of resolving a full one-third of all collocation problems within a one-hour period and the overall average for resolving collocation problems, including some complex issues, is now less than three and one-half days. Allegiance finds BA-NY's improvement in this area to be commendable.

Similarly, BA-NY's ability to isolate and repair network problems reported by Allegiance has significantly improved over the last several months. When Allegiance encounters a network problem associated with a facility purchased from BA-NY, Allegiance submits a "trouble ticket"

describing the problem. In the past, BA-NY would often close out trouble tickets without properly isolating or correcting the problem, which forced Allegiance to submit multiple trouble tickets to cure a single problem. In July of this year, BA-NY correctly isolated the BA-NY facility troubles reported to it by Allegiance 75 percent of the time, and in September, BA-NY isolated network troubles in the first instance 97 percent of the time. As a direct result of such improvements, BA-NY's mean time to repair decreased from 54.08 hours in July to 28.7 hours in September. Allegiance again commends BA-NY for this substantial improvement.

C. BA-NY's Performance Currently Suffers In Four Areas: Hot Cuts, Interconnection Trunks, High-Capacity Loops, And Transport Facilities

The Commission should require BA-NY to demonstrate that it has eliminated chronic delays in four areas: hot cuts, interconnection trunks, high-capacity loops, and transport facilities, before finding BA-NY in compliance with the competitive checklist. Allegiance's new customers suffer when the process to perform "hot cuts," *i.e.*, live-service conversions of customers from BA-NY to Allegiance, fail. When such failures occur, Allegiance suffers competitive and financial harm from the loss of new customers, from the impact to Allegiance's reputation, from the delays in achieving revenue associated with late customer cutovers, and from service credits that are necessary to retain some customers. BA-NY heard the concerns of Allegiance and agreed to work jointly with Allegiance in order to identify ways to improve the entire UNE hot cut process. Allegiance and BA-NY jointly set the objective of reducing cycle time to activate service and to prevent service-affecting conditions. Following the joint effort, BA-NY implemented solutions in the areas of dial tone checks, ANI checks, and enforcement by

BA-NY of pre-cutover “go, no-go” checks one hour before cutovers. These BA-NY actions have resulted in hot cut failures attributable to BA-NY dropping from more than 70% a year ago to less than 20% in recent months. Obviously, BA-NY's implementation of the improved process has still not been optimal. Allegiance appreciates BA-NY's progress, however, additional improvement is necessary before Allegiance can certify BA-NY's compliance in this area.

Improvement has largely eluded BA-NY in its delivery of interconnection trunk groups and associated transport facilities. Interconnection trunk groups are truly critical facilities that are used to connect Allegiance's network with BA-NY's network. Without interconnection trunks, Allegiance cannot exchange traffic with BA-NY. In spite of the importance of these facilities, BA-NY often provides interconnection trunks to Allegiance after the appointed due date. During the most recent quarter of this year, for example, 62 percent of all interconnection trunks ordered by Allegiance were delivered by BA-NY after the set provisioning date (*i.e.*, the Firm Order Commitment or “FOC” date for installations). Delays in trunk provisioning can and do cause Allegiance's customers to encounter occasional call blocking.

BA-NY's trunk provisioning delays have contributed to the delayed deployment of Allegiance's second switch in New York. This switch deployment delay, in turn, has limited Allegiance's ability to provide service to several would-be customers, since the capacity of Allegiance's operational switch in New York is nearly exhausted. Because BA-NY at present is

not yet providing interconnection trunks on a timely basis, it currently falls short of satisfying the competitive checklist.⁷

Allegiance has encountered similar delays in BA-NY's delivery of high-capacity loop and transport facilities. During the third quarter of this year, Allegiance's data indicate that 46 percent of all DS1 level loops (other than those associated with interconnection trunks that were addressed above) ordered by Allegiance from BA-NY were delivered after the scheduled due date (*i.e.*, the "FOC" date for installations). Over the same time period, 40 percent of DS3 level transport facilities ordered by Allegiance from BA-NY were not delivered on time. These delays in providing high capacity loop and transport facilities have prevented Allegiance from meeting consumer demand for its services in New York. Further, because customers hold Allegiance responsible for these delays in obtaining service, BA-NY's deficiencies in providing service damage Allegiance's reputation in New York. In addition, BA-NY's tardy delivery of DS3 transport services prevents Allegiance from expanding service coverage in New York, since Allegiance needs BA-NY DS3 transport before it can activate new collocation facilities.

Because BA-NY currently does not provide access to so many high-capacity loops and transport facilities on a timely basis, the Commission should require improvement before finding BA-NY in compliance with the competitive checklist obligations to provide nondiscriminatory access to unbundled network elements,⁸ particularly unbundled local loops⁹ and local transport.¹⁰

⁷ *Id.* at § 271(c)(2)(B)(ii).

⁸ *Id.* at § 271(c)(2)(B)(iv).

⁹ *Id.* at § 271(c)(2)(B)(v).

¹⁰ *Id.* at § 271(c)(2)(B)(i).

Again, Allegiance is willing to report to the Commission on BA-NY's performance in these areas until BA-NY is in compliance.

D. The Commission Should Permit BA-NY, Upon Request, To Provide Supplemental Information Demonstrating Compliance With Outstanding Section 271 Issues, Subject To An Additional 90-Day Review Period

Allegiance recognizes that the Commission may not approve a section 271 application until such time as a BOC demonstrates compliance with all competitive checklist items. At the same time, however, Allegiance notes that BA-NY is extremely close, perhaps just several weeks away from demonstrating that its refined UNE hot-cut process is fully implemented and that it is provisioning interconnection facilities, unbundled loops, and transport to Allegiance in complete accordance with section 271. Rather than deny this Application, the Commission, at BA-NY's request, should permit BA-NY to work with Allegiance to come into compliance with the few outstanding performance issues remaining.

The Commission previously has established a procedure for a BOC to follow in a case where it is able to demonstrate compliance with some, but not all, of the requirements of section 271. In its decision denying BellSouth's second section 271 application for Louisiana, the Commission identified the specific provisions of section 271 that BellSouth had satisfied.¹¹ The Commission further ruled that BellSouth would not be required to refile information necessary to establish compliance with those provisions in its next Louisiana application. Instead, the

¹¹ *Application of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, Memorandum Opinion and Order, 13 FCC Rcd 20599, ¶ 8 (1998).

Commission held that BellSouth would be permitted to incorporate by reference its prior showing, provided that it certified that its performance at the time of the subsequent filing was consistent with the showing made previously to the Commission.¹²

The procedure the Commission adopted in the BellSouth case seems well-suited for an application that has significant deficiencies with respect to various checklist requirements, similar to the situation in Louisiana. In New York, by contrast, the remedial measures that BA-NY needs to implement to comply fully with section 271 are quite limited and narrowly focused, as discussed above. Hence, Allegiance suggests that BA-NY consider a voluntary request for suspension of the 90-day statutory period so that it can address and resolve the areas in which its performance to date falls slightly short of the statutory minimum. This approach would avoid the need for BA-NY to file a second application. Instead, after it supplements the record to remedy the deficiencies, the 90-day period could be restarted, and BA-NY's Application could be prosecuted to a successful conclusion.

III. BEFORE GRANTING SECTION 271 RELIEF TO ANY BOC, THE COMMISSION MUST ESTABLISH A FEDERAL ANTI-BACKSLIDING FRAMEWORK

Although BA-NY has not yet achieved compliance in several areas, it is clear that BA-NY is very close to satisfying section 271's competitive checklist. In preparation for in-region interLATA market entry, the Commission should develop a federal framework for ensuring ongoing BOC compliance with that checklist and should do so in a manner that is consistent with Allegiance's February 1, 1999 Anti-Backsliding Petition. Because BOCs must continue to

¹² *Id.*

satisfy the market-opening requirements imposed by section 271 after receiving in-region interLATA approval, a federal framework is needed to make the “rules of the road” clear to BOCs, competitors and regulators.

The Commission has the authority to impose anti-backsliding measures either through a rulemaking proceeding or by imposing conditions on its approval of a section 271 application. As the Commission recognized in denying Ameritech’s section 271 application for Michigan, the Commission has independent authority under sections 271 and 303(r) to prescribe conditions as part of its approval of a section 271 application.¹³

In its Anti-Backsliding Petition, Allegiance noted that it is imperative for the Commission to establish a set of performance metrics for the purposes of ongoing federal section 271 enforcement.¹⁴ Allegiance further observed that the Commission could adopt state commission-endorsed performance metrics that meet national minimum standards when addressing section 271 compliance issues in a given state.¹⁵ Under this framework, for example, the Commission could utilize the New York Commission’s performance standards in assessing whether BA-NY continued to satisfy its section 271 obligations in New York after receiving in-region approval.

¹³ *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, Memorandum Opinion and Order, 12 FCC Rcd 20543, ¶¶ 400-01 (1997).

¹⁴ *Allegiance Petition* at 13-22.

¹⁵ *Id.* at 19-20.

The Act assigns to the Commission the ongoing duty to ensure that a BOC continues to comply with the requirements of section 271 after obtaining in-region interLATA authority.¹⁶ Violation of a Commission order granting in-region interLATA relief would indicate that the BOC has ceased to satisfy section 271, and therefore subject the BOC to remedial action by the Commission. National minimum performance standards and metrics are clearly necessary to enable the Commission, on an on-going basis, to protect consumers from competition-hindering actions of the dominant providers and to fulfill its duty to ensure continued section 271 compliance.

Allegiance's Anti-Backsliding Petition includes a three-tiered remedy structure that would "ratchet up" pressure to encourage a BOC to comply with its section 271 obligations and commitments.¹⁷ Failure to comply with minimum performance standards would result in price reductions to competitive LECs. Continued noncompliance would result in the temporary suspension of the BOC's authority to provide new in-region interLATA services (without affecting existing customer services) pursuant to the complaint procedure outlined in section 271(c)(6) of the Act. In instances where such price reductions and the temporary suspension of section 271 authority for new and additional customer services failed to result in BOC compliance with the competitive checklist, the Commission would assess material fines on the BOC, as expressly authorized by the Act.

¹⁶ 47 U.S.C. § 271(c)(6)(A).

¹⁷ *Allegiance Petition* at 24-28.

The importance of Commission action is further highlighted by the limited legislative authority that many of the state commissions possess in the area of enforcement. In New York, for example, under the Performance Assurance Plan, failure to meet the New York Commission's "critical performance measures" would result in bill credits to affected competitive LECs. In order to ensure that the goals of the statute are met, however, the efforts of the New York Commission must be reinforced by the FCC's exercise of its full authority under the statute. The FCC is the authority charged with granting interLATA approval, and only the FCC can suspend that approval.

The record developed by the Commission in response to the Anti-Backsliding Petition demonstrated the need for the development of federal anti-backsliding measures.¹⁸ Based on that record, Allegiance submits that it is critical for the Commission to adopt such anti-backsliding measures to evaluate ongoing BOC compliance with the requirements of section 271. The Commission should have those measures in place prior to, or at least concurrently with, BOC entry into in-region interLATA markets.

IV. BEFORE GRANTING SECTION 271 RELIEF TO ANY BOC, THE COMMISSION SHOULD ESTABLISH A "CUSTOMER LIBERATION" FRESH LOOK POLICY TO ENSURE THAT MARKETS REMAIN IRREVERSIBLY OPEN TO COMPETITION

A Commission decision authorizing a BOC to enter in-region interLATA service markets in a state will add a new competitor to markets that have been open to new entrants for many

¹⁸ See, e.g., RM 9474, Comments of Time Warner Telecom, 1 (noting that "[s]ection 271 can only serve its purpose as a mechanism for lowering the barriers to entry into the local market if (1) the FCC establishes clear performance measures ... and (2) the FCC adopts effective rules for post-[s]ection 271 approval enforcement").

years. By contrast, only in recent months have new entrants begun to make in-roads into the BOCs' local telecommunications markets. To ensure that all local service providers have a fair opportunity to compete to serve all customers in a state, the Commission should implement a "customer liberation" fresh look policy, concurrently with its grant of section 271 authority in that state. Specifically, the Commission should adopt a "fresh look" requirement that permits customers to discontinue long term contracts for local exchange and intraLATA and Corridor long distance services without penalty. In New York, for instance, Allegiance and other competitive LECs have encountered serious difficulties in competing against BA-NY for local service customers that have been "locked into" BA-NY term plans for Centrex, T1, PRI, and ISDN local services.

The Commission in the past has used a fresh look policy as a key tool in opening previously monopolized markets to competition. In 1992, for example, the Commission began the process of opening the interstate exchange access market to competition by requiring incumbent LECs to offer "expanded interconnection" to competitive access providers.¹⁹ The Commission recognized that some interstate access customers had entered into long-term access arrangements that raised "potential anticompetitive concerns since they tend to 'lock up' the access market, and prevent customers from obtaining the benefits of the new, more competitive access environment."²⁰ Consequently, the Commission permitted customers with special access arrangements entered into prior to adoption of its order and subject to service terms in excess of

¹⁹ See *In the Matter of Expanded Interconnection with Local Telephone Company Facilities*, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369 (1992).

²⁰ *Id.* at ¶ 201.

three years “to take a ‘fresh look’ to determine if they wish to avail themselves of a competitive alternative.”²¹

Similarly, when the Commission began to streamline and relax its regulation of AT&T’s interstate interexchange services, a fresh look policy was an important element in its overall approach to fostering competition in that market.²² In its initial order, the Commission recognized that AT&T continued to wield market power in the market for 800 services because 800 numbers were not yet portable. Although the FCC concluded that many interstate interexchange services were available on a competitive basis from other providers, it expressed concern that until 800 number portability was implemented, AT&T could “leverage market power in 800 or inbound services with respect to these customers through the inclusion of 800 and inbound services in [arrangements for other interstate long distance services].”²³ The Commission used a fresh look policy to address these potential anticompetitive effects. Specifically, it required AT&T to permit customers with service packages that included 800 as well as other services to terminate those packages “without the imposition of any termination liabilities” as soon as 800 numbers became portable.²⁴

The Commission’s use of a fresh look policy in the past has worked well in helping to bring the benefits of competition to consumers in those markets expeditiously. Further, the

²¹ *Id.* (footnote omitted).

²² *See In the Matter of Competition in the Interstate Interexchange Marketplace*, Report and Order (FCC 91-251), CC Dkt. No. 90-132 (1991).

²³ *Id.* at ¶ 149.

importance of the problem of customers “locked up” in long-term service arrangements previously has been presented to the Commission. Specifically, competitive LECs have urged the Commission that the potential assessment of termination penalties has deterred customers from switching their service from an incumbent LEC to a competitive LEC.²⁵ Allegiance recommends that the Commission similarly adopt a “customer liberation” or fresh look policy in conjunction with its grant of in-region interLATA authority to a BOC. Consistent with its prior decisions, the FCC should permit any customer with an existing long-term contract for local exchange, intraLATA toll, and “corridor”²⁶ services to terminate that agreement without incurring any termination penalties. This option should be available for a customer of any such agreement that is in effect as of the date of the Commission’s order granting in-region, interLATA authority to a BOC. As discussed above, the Commission has broad authority under the Act to impose post-approval conditions on its grant of section 271 authority to a BOC.

This customer liberation policy would remove artificial barriers to full competition between competitive LECs and incumbent BOCs. Customers for the first time would have access to a full range of alternative services offered by different carriers. Competitive LECs for the first time would have a realistic opportunity to compete to serve these customers. And, BOCs for the first time would have to compete to retain these customers.

²⁴ *Id.*

²⁵ *See* KMC Telecom, Inc., Petition for Declaratory Ruling, CC Dkt. No. 99-142 (filed Apr. 26, 1999).

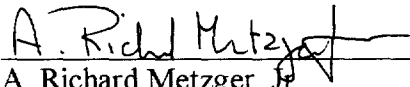
²⁶ Corridor services refer to interLATA services in areas in which there are strong communities of interest, such as New York City and five counties in northern New Jersey.

CONCLUSION

For the reasons set forth above, the Commission should permit BA-NY to request a suspension of the statutory period so that it can address and resolve the areas in which its performance to date falls slightly short of the statutory minimum. After it has supplemented the record and has demonstrated compliance, the 90-day review period could be restarted, and BA-NY's Application could be prosecuted to a successful conclusion.

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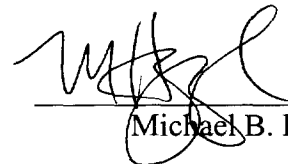

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Dated: October 19, 1999

CERTIFICATE OF SERVICE

I, Michael B. Hazzard, do hereby certify that on this day of October 19, 1999, I caused a copy of the foregoing Comments of Allegiance Telecom, Inc. to be served by messenger and first-class mail, postage prepaid, upon each of the parties on the attached service list.



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